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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ALLAN E. PALMER,

Petitioner,

v.

THE CITY OF SEATTLE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

ALLAN E. PALMER
3508 West Bertona
Seattle, Washington 98199
(206) 282-1588
Counsel for Petitioner Pro Se,

QUESTION PRESENTED

Does the Due Process Clause of the Fourteenth Amendment require that a stipulation be voluntary?

LIST OF PARTIES INVOLVED

Pursuant to the Rules of this Court the following is a party in this Court whose judgment is sought to be reviewed: Allan E. Palmer.

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TABLE OF AUTHORITIES

Case:

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TO THE SUPREME COURT OF WASHINGTON

OPINION BELOW

The Washington State Supreme Court rendered its decision on June 3, 1985, in an opinion reported at 51559-O. A copy

of that opinion is attached as petitioner's Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28. U.S.C. § 1257.

The Washington State Supreme Court entered an opinion dated June 3, 1985. Petitioner sought review of a Personal Restraint Petition that was dismissed by the Court of Appeals on March 27, 1985 (Appendix C).

STATEMENT OF THE CASE

On October 20, 1981 petitioner was charged with Discharging a Firearm and Harassment alleged to have occurred on August 25, 1981, contrary to Seattle Municipal Code 12A.28.050 (Appendix A) and 12A.06.040, respectively. On November

18, 1981, a petitioner appeared with counsel for trial in Seattle Municipal Court.

At trial, all charges pending against petitioner were dismissed upon defense counsel's stipulation that the police report contained facts sufficient to support the charge of Discharging a Firearm. Upon review of the police report, the trial court found petitioner guilty. The trial court then ordered a pre-sentence report and set a sentencing date of December 16, 1981.

On December 16, 1981, the trial court sentenced petitioner to serve 16 days in City Jail and imposed a $250 fine, all 16 days and $125 were suspended upon petitioner's compliance with several conditions. The conditions of suspended sentence were:

1. petitioner attend mental health counseling;

2. petitioner have no contact with certain named persons in his neighborhood;

3. petitioner use no bullhorns or flashlights in his neighborhood; and

4. petitioner have no criminal offenses.

PARTY INVOLVED

Allan E. Palmer is the sole petitioner involved.

SUMMARY OF FACTS

On October 20, 1981 the City of Seattle brought criminal charges against petitioner, for: 1) discharging a firearm or explosive on August 25,1981, violating

Seattle Municipal Code 12A.28.050 (Appendix A); 2) harassment; 3) discharging a firearm or explosive on August 9, 1981; 4) reckless endangerment; and 5) menacing. Petitioner was brought to trial on November 18, 1981 and on the condition that petitioner submit his case to the judge on the police report, all of the charges were dismissed except one count of discharging a firearm on August 25, 1981. To that charge, a not guilty plea was entered and the case was submitted to the Honorable Judge John M. Darrah on the police record. The judge found the petitioner guilty.

ARGUMENT

1.

PETITIONER DIDN'T AUTHORIZE THE STIPULATION

Petitioner argued against the stipulation during the trial conference with defense counsel. This person would not listen to petitioner and told petitioner if he said anything in court he would be held in contempt and receive a jail sentence. Petitioner would not have consented to a stipulation because the object of the case, quite simply, was to evict petitioner from the neighborhood, or at the very least, to lock petitioner firmly back in the closet for being a "known" homosexual. Petitioner had witnesses to contradict the charges and witnesses to testify about the truth of the

case at trial. See Equitable Trust Co. v. Washington-Idaho W., L. & P. Co., 300 F.601 (E.D. Wash. 1924).

CONCLUSION

For the above reason petitioner prays that a writ be granted.

Respectfully submitted,

Allan E. Palmer
3508 West Bertona
Seattle, Washington 98199
(206) 282-1588
Counsel for Petitioner, Pro Se.

APPENDIX A

STATUTE INVOLVED

Seattle Municipal Code 12A.28.050.

Discharging a Firearm or Explosive

Exceptions

It is unlawful to discharge any cannon, gun, pistol, revolver, or other firearm, or to fire or explode or other thing containing p wder, or other explosive material, except on days of public celebration or jubilation and then only as permitted by law. This section shall not apply to the following: licensed shooting galleries, airplane ordinance testing and proving grounds used in the manufacture of aircraft; rifle or practice range located, established, used and/or patrolled by the armed forces of the United States, by the State of Washington, or by the police department; thee

discharge of any firearm in the performance of official duties or in the course of employment or in civilian sports by any person having a permit or the lawful right to carry such firearm; or to the lawful right to carry such firearm; or to the lawful use of explosive for blasting or construction work.

APPENDIX B

THE SUPREME COURT OF WASHINGTON

In the Matter of the Personal restraint Petition of	)	No. 5 1 5 5 9 -O
ALLAN E. PALMER	)	RULING DENYING MOTION FOR DISCRETIONARY REVIEW
Petitioner.	)	

Allan E. Palmer moves for discretionary review of an order of the Acting Chief Judge of Division One of the Court of Appeals. That order, dated March 27, 1985, dismissed a personal restraint petition in which Mr. Palmer challenged a Seattle Municipal Court conviction for discharging a firearm. This was the third personal restraint petition brought by Mr. Palmer to challenge this conviction.

In the instant motion for discretionary review, Mr. Palmer urges that his conviction is invalid because he did not

authorize the stipulation of fact based on which the trial court found him guilty. This is essentially the same challenge as was made by Mr. Palmer in an earlier personal restraint petition; I addressed the contention in an October 28, 1983 ruling denying motion for discretionary review in cause No. 49896-2. The instant motion contains neither new facts nor new law, nor anything else that would persuade me to view Mr. Palmer's stipulation contention any differently than I did in 1983.

In short, Mr. Palmer has failed to demonstrate that the Acting Chief Judge committed obvious or probable error in dismissing his personal restraint petition. There is thus no basis for further

review by this court under the standards of RAP 13.5(b). The motion for discretionary review is denied.

DATED at Olympia, Washington this 3rd day of June 1985.

Geoffrey Crooks

Commissioner

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint Petition of:	)	No. 15622-5-I
	)	ORDER DISMISSING PERSONAL RESTRAINT PETITION
ALLAN E. PALMER,	)	
Petitioner.	)	

Petitioner Allan E. Palmer has filed a personal restraint petition seeking relief from his conviction in Seattle Municipal Court for discharging a firearm or explosive. His conviction was affirmed on appeal by the King County Superior Court. A subsequent motion for discretionary review of the Superior Court's decision was denied by a commissioner of this court. A motion to modify the commissioner's ruling was denied, and the

Supreme Court denied discretionary review. This court has previously dismissed two other petitions filed by petitioner under court of Appeals cause Nos. 14285-2-I and 13300-4-I. In each case, the Supreme Court denied discretionary review.

Petitioner alleges the following grounds for relief: (1) he was denied his right to enjoy property; (2) he was denied effective assistance of counsel; and (3) he was not advised of his constitutional right to a jury trial.

Regarding issues (1) and (2), this court rejected similar claims in an earlier petition in cause No. 13300-4-I. Petitioner is barred from again raising them here. In re Haverty, 101 Wn.2d 498, 502-03, 681 P.2d 835 (1984).

As to the final issue, petitioner argues that his conviction is unlawful because he was not advised of his constitutional right to a jury trial as required by Pasco v. Mace, 98 Wn.2d 87, 653 P.2d 618 (1982). However, petitioner can prevail on collateral review only if he proves he suffered actual prejudice arising from an error of constitutional magnitude. In re Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983). While petitioner may allege a constitutional error, he cannot demonstrate prejudice.

In this instance, the case was submitted to the trial court on stipulated facts as part of an agreement with the prosecutor. Defense counsel stipulated that there was sufficient evidence in the record to find petitioner guilty of the

offense of discharging a firearm. Nor is there any indication that petitioner did not participate in the decision to enter into the agreement. Since petitioner essentially stipulated to his guilt, he has not sustained his burden of proof in this collateral proceeding. In re Hews, supra.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed, and in the event he files "another petition for similar relief without establishing good cause, the clerk of this court shall return the petition without filing." In re LaLande, 30 Wn. App. 402, 406, 634 P.2d 895 (1981).

Done this 27th day of March, 1985.

Scholfield A C J

Acting Chief Judge